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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 632

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JESSE CANTWELL, NEWTON CANTWELL
and RUSSELL CANTWELL,
Appellants;

JESSE CANTWELL,
Petitioner,

v.

THE STATE OF CONNECTICUT.
Respondent.

■

APPEAL FROM AND CERTIORARI TO THE CONNECTICUT
SUPREME COURT OF ERRORS

APPELLANTS' AND PETITIONER'S BRIEF.

JOSEPH F. RUTHERFORD
HAYDEN COVINGTON
Attorneys for Petitioners

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UNITED STATES SUPREME COURT

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APPEAL FROM AND CERTIORARI TO THE CONNECTICUT SUPREME COURT OF ERRORS

APPELLANTS' AND PETITIONER'S BRIEF

Opinions Below

The opinion of the Connecticut Supreme Court of Errors is not yet officially reported, but is unofficially reported in Atlantic Reports, Vol. 8 (second series), pages 533-537.

The opinion of the Court of Common Pleas is not reported.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a), (b) and (c) of the Judicial Code [28 USCA 344 (a), (b) and (c)].

Timeliness

The judgment of the Connecticut Supreme Court of Errors was entered on June 26, 1939 (Record p. 102). The opinion of that court was delivered on the same date and appears in the Record, p. 97 et seq. Notice in writing of petitioners' intention to present motion for reargument was duly filed. On September 12, 1939, petitioners duly and timely filed their motion for reargument (R. p. 103). The motion for reargument was overruled and denied October 13, 1939 (R. p. 105). Thereby the judgment of the Connecticut Supreme Court of Errors as rendered and entered on June 26, 1939, became final as against petitioners on October 13, 1939. A petition for appeal to the Supreme Court of the United States was duly and timely filed with the Connecticut Supreme Court of Errors, which was duly and timely docketed with this Court within ninety days from the date that the judgment of the Connecticut Supreme Court of Errors became final. On February 26, 1940, this Court noted probable jurisdiction as to appeal of all defendants from the conviction under the third count, and the papers on which appeal was allowed were treated as a petition for writ of certiorari as to the appeal of Jesse Cantwell from his conviction under the fifth count, and certiorari was granted.*

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* Hereinafter the term "petitioners" or "petitioner" is used uniformly to designate all or any of the appellants as to the conviction of each of them under the "third count" and the petitioner Jesse Cantwell as to his conviction under the "fifth count".

The Statutes

One of the statutes, the constitutionality and validity of which as construed and applied to petitioners is here drawn in question, is Section 6294 of Connecticut General Statutes, Revision of 1930 (pages 1935, 1936), as amended by Section 860d of the Connecticut Public Acts 1937 (page 490), and which statute reads as follows:

> "No person shall solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable or philanthropic cause, from other than a member of the organization for whose benefit such person is soliciting or within the county in which such person or organization is located unless such cause shall have been approved by the secretary of the public welfare council. Upon application of any person in behalf of such cause, the secretary shall determine whether such cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity, and, if he shall so find, shall approve the same and issue to the authority in charge a certificate to that effect. Such certificate may be revoked at any time. Any person violating any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both."

The other of the statutes, the constitutionality and validity of which as construed and applied to petitioners is here drawn in question, is Section 6194 of Connecticut General Statutes, and which statute reads as follows:

> "Any person who shall disturb or break the peace by tumultuous and offensive carriage, noise or behavior, or by threatening, traducing, quarreling with, challenge, assaulting or striking another, or shall disturb or break the peace, or provoke contention by following or mocking any person with abusive or indecent language, gesture or noise, or shall by any writing, with intent to intimidate any person, threaten

to commit any crime against him or his property, or shall write or print and publicly exhibit or distribute, or shall publicly exhibit, post up or advertise any offensive, indecent or abusive matter concerning any person, shall be fined not more than five hundred dollars, or imprisoned in jail not more than one year or both."

The Connecticut Supreme Court of Errors and the courts below held that the statutes were not unconstitutional and that they did not abridge freedom of speech and press and freedom to worship ALMIGHTY GOD, in violation of the United States Constitution, Fourteenth Amendment, Section 1. Accordingly, that court sustained the statutes' applicability to petitioners' acts and decided in favor of validity of the statutes and held them to be constitutional as applied to petitioners.

Statement

Petitioners, a father (Newton Cantwell) and his two minor sons (Jesse and Russell) aged sixteen and eighteen, respectively, are Jehovah's witnesses. (R. p. 55) Each bore credentials attesting that the Watch Tower Bible & Tract Society was represented by them and that each of them is an ordained minister of Almighty God to preach the gospel of His Kingdom under Christ Jesus. (R. p. 19, Exhibit B) Each was equipped with a bag containing books and pamphlets in several different languages, a portable phonograph, and a set of disk records in several different languages, which records when played introduced and described the literature containing explanations of the purposes and prophecies of Almighty God written in the Bible. (R. p. 19, Exhibit C)

On April 26, 1938, petitioners were preaching the gospel of God's Kingdom in the city of New Haven by going singly from house to house, tendering to each householder opportunity to hear the playing of one of the phonograph records.

(R. p. 55) The record played to the householder was also played in open court, and it says:

"The publishers now exhibit to the people the book entitled 'Enemies'. The purpose is to enable all persons who love peace and righteousness to learn how they may find protection and safety.

"Fear and dread now afflict almost all persons. There is a real reason. To know the reason and to learn how one may gain peace and joy are of very great importance.

"The perfect word of God is the authority upon which the book 'Enemies' is based. Therein is found the proof that the greatest enemy of man is invisible to human eyes, and which is Satan the deceiver. His purpose is to entrap men and lead them into destruction. A host of wicked angels operate with him, and he also uses selfish and ambitious men to accomplish his wicked purpose. He has deceived and overreached the rulers, made them unjust and cruel, and for centuries the result to the people has been much suffering and distress.

"The most seductive and subtle instrument employed to deceive man is religion, because religion has the appearance of doing good, whereas it brings upon the people great evil. There are many different religions, all of which are deceptive, are the instruments of the enemy Satan, and all work to the injury of men.

"This book submits the conclusive proof that for more than fifteen hundred years a great religious system, operating out of Rome, has by means of fraud and deception brought untold sorrow and suffering upon the people. It operates the greatest racket ever employed amongst men and robs the people of their money and destroys their peace of mind and freedom of action. That religious system is vigorously pushing its political schemes amongst all the nations of earth, with the avowed purpose of seizing control of the nations and ruling the people by cruel dictators.

Some of the nations have fallen under that wicked power, and all nations are now greatly endangered. Because of the increasing power of the enemy the liberties of the people are rapidly passing away and all nations are rushing into infidelity and into ultimate destruction.

"All thoughtful persons realize that the people now face the greatest crisis yet known. Enemies of man are everywhere, and no uninformed man feels safe and secure. Where and how can the people find protection from such enemies? Some power far greater than that of Satan and his allies must intervene in behalf of the people if they find and receive protection from their enemies. There is no human power that can protect man, and this all thoughtful persons must admit. The matter is of too great importance to pass it by without consideration. The Almighty God in his goodness has made it possible for every person to now get the greatly needed information.

"The book 'Enemies' submits for your instruction the correct answer to the questions and the complete proof in support thereof, and which proof is indisputable and will satisfy every reasonable mind. It discloses who are the real friends of honest men and what men must do to find security and life. For the protection of yourself and your children a knowledge and understanding of the contents of that book is absolutely necessary. It is now being carried to the people by those who love God and who have the interest of honest persons fully at heart. The publishers are not selling the book, but they do receive a small contribution for each book, which will be used for printing more books to aid the people. Persons who are too poor to contribute will receive the book free upon condition that they study it carefully. To learn the contents of this book will greatly benefit you and enable you to do good to others and to honor your Creator.

"Because the book 'Enemies' makes known the truth, you will find that the clergymen of all religious organizations will oppose it and try to prevent you from

learning its contents. Such opposers are your enemies. Ignore them and keep in mind the word of Almighty God wherein it is written, 'Study to show thyself approved unto God.' A knowledge of His word is your shield." (R. pp. 40-42)

At the conclusion of the playing of the above record the petitioners would invite the householder to receive one or more of the books or pamphlets and to contribute a small sum to aid in printing and distributing more like literature; and whenever a householder was not in position to contribute, a book or a pamphlet was left, free of charge, on the condition that it would be read and studied by the person so receiving it. (R. p. 55)

On April 26, 1938, petitioners were arrested for preaching the gospel of God's Kingdom in the above-described manner on Cassius Street in New Haven, that being a thickly populated area where, according to the court below, about ninety percent of the residents are Roman Catholics. (R. p. 98).

The identification card carried by each petitioner and introduced in evidence before the trial court, provided over the signature of the Watch Tower Bible & Tract Society by its president, J. F. Rutherford, a certificate that the named bearer 'is an ordained minister of Jehovah God and as such is one of Jehovah's witnesses and a representative of the society, which is chartered by law to preach the gospel of God's kingdom, and that the said minister as one of Jehovah's witnesses is commanded by Almighty God to obey His law, which commandments are written in the Bible at Isaiah 61:1, 2; Isaiah 43:9-12; Matthew 10:7, 12; Matthew 24:14; Acts 20:20; 1 Peter 2:21; 1 Corinthians 9:16; Acts 3:23; Acts 4:19; Acts 5:29'. (R. p. 19, Exhibit B)

The above facts were found by the trial court. (R. p. 18)

By informations, each containing five counts, petitioners severally were charged with violating, among other

things, Section 6294 of Connecticut General Statutes as amended by Section 860d of the 1937 Supplement quoted above (page 3) and in the footnote of the Opinion of the Connecticut Supreme Court of Errors. (R. p. 97) This offense was charged in the third count. Under the fifth count the State contended that the act of presenting this literature containing subject matter which shocked the religious susceptibilities of the complaining witnesses constituted a breach of the peace or was conduct inciting a breach of the peace. (R. pp. 2-4, 97)

Demurrers to all five counts were filed by petitioners and were overruled as to the third and fifth counts and sustained as to all other counts. (R. pp. 11-14) The case was tried to the court without a jury and after hearing evidence, on September 23, 1938, all of the petitioners, who were jointly tried by agreement, were convicted of violating the third and fifth counts and fined five ($5.00) dollars on each of said counts. Costs were taxed against Newton Cantwell; $55.80; and $30.07 costs against each of the other two petitioners. All were ordered to stand committed until judgment should be complied with. (R. p. 14)

On October 20, 1938, petitioners by proper instrument duly and timely appealed from the convictions to the Supreme Court of Errors. (R. p. 16) It was stipulated that the cases on appeal would be consolidated and reviewed on the one record. (R. p. 16)

The books *Riches* and *Enemies* were introduced in evidence (Exhibit A). Portions of the books *Enemies, Preservation,* and *Riches,* and the booklet *Cure,* were read in evidence by the prosecuting attorney. (R. pp. 42-52) The contents of these books related exclusively to explanation of how prophecies of Holy Writ recorded centuries ago are now being fulfilled; of how, according to the Bible, the time is near at hand when JEHOVAH, the Almighty God, will completely destroy Satan and his entire organization, consisting of commercial, political and ecclesiastical elements, in the "battle of that great day of God Almighty"

at Armageddon; which destruction shall be immediately followed by continuing growth and expansion of God's Kingdom throughout the entire earth, to bring everlasting peace, joy, life, prosperity and happiness to all survivors and eventually also to many who have died in centuries past and who shall be resurrected to live upon earth. The contents, in part, are admittedly an attack upon religion as practiced today and at all times since man has been upon earth, but at the same time such books' contents clearly set forth the true distinction between all religion and the true worship or service of Almighty God, thereby exposing religion as a snare and a racket of the very worst kind, and that religion is in no way related to or a part of the true worship of Almighty God. (R. p. 19)

Federal Questions Presented

Substantial *federal questions* attacking the validity of the statutes were raised in the trial court. They were first raised by demurrer to the third and fifth counts of the informations, on the grounds that Sections 6194, 6294, 6066 and 6244 of Connecticut Statutes are invalid in that each of said statutes unreasonably restricts and denies freedom of speech, freedom of press and freedom to worship Almighty God, as to petitioners. (See points 3, 4, 5 and 6 of demurrer, R. p. 11.) These points as to said statutes were overruled by the court. (See Memorandum on Demurrer, R. p. 12) As grounds for moving for judgment in their behalf petitioners, at conclusion of the evidence, made the following claims of law:

That Section 6294 of Connecticut General Statutes was contrary to Article 1, Sections 3, 5 and 6 of the Connecticut Constitution and to the "due process" clause of the Fourteenth Amendment to the United States Constitution, in that as applied it unduly restricts and denies freedom of

speech, freedom of press and freedom to worship Almighty God. (R. pp. 25-26)

These points of law were overruled by the trial court. (See Record, p. 22, Section II, paragraphs 1, 2 and 3.)

These *federal questions* were carried forward and urged in the assignments of error which were presented to the Supreme Court of Errors in the time and manner required by statute. (See Record, p. 27, Assignments of Error, paragraph 8.)

The Supreme Court of Errors passed upon each of said *federal questions* or assignments attacking the validity of the statutes as applied to appellants, and held the statutes valid and constitutional as so applied and found that they did not violate the Fourteenth Amendment to the United States Constitution. (See Opinion, R. pp. 97-102.) That court said:

> "The further contention that this statute, as applied to the acts of the defendants, is invalid under Secs. 3, 5 and 6 of Article First of the Connecticut Constitution and the due process clause of the Fourteenth Amendment of the Constitution of the United States, appears to be based upon a claim that the statute, as applied to the defendants and their acts, abridges or denies freedom of religious profession and worship and liberty of speech and of the press. . . . It is such solicitation which brings the defendants within the statute, not their other and apparently predominant activities in the dissemination of literature. For this reason there is not, as claimed, the constitutional objection which was found as to the application to members of this same organization of ordinances involved in Lovell v. City of Griffin, 303 U. S. 444, . . . and Cincinnati v. Mosier, 14 Ohio Opinions 134 . . . The conviction of violation of Sec. 6294 is supported by the facts found and is not invalid on constitutional grounds."

The Supreme Court of Errors set aside the conviction of Russell Cantwell and Newton Cantwell under the fifth

count charging 'inciting a breach of the peace' but sustained the conviction of Jesse Cantwell under such count five which assessed a fine and costs.

The Supreme Court of Errors sustained the conviction of each of the three defendants under the third count charging a violation of Section 6294 of the General Statutes as amended by Section 860d of the 1937 Supplement, and affirmed the judgment of the trial court assessing a fine and costs as to each defendant. (R. p. 102)

In their motion for reargument the petitioners each complained of the judgment of the Supreme Court of Errors for and on account of each of the grounds set forth in the assignments of error contained in the petition for appeal to the United States Supreme Court herein. (R. pp. 103, 110)

Specification of Errors to Be Urged

Petitioners assign the following errors in the record and proceedings in said cause:

1. The court below committed reversible error in failing to hold that the Connecticut statute, Section 6294 of the General Statutes as amended by Section 860d of the 1937 Supplement as construed and applied to the petitioners is void by reason of the fact that on its face and as thus construed and applied it is in conflict with the "due process" clause of the Fourteenth Amendment to the United States Constitution in the following particulars, to wit:

a) It unreasonably and unlawfully abridges and denies petitioners' freedom to worship Almighty God, Jehovah, according to the God-given commands recorded in Holy Writ and according to the dictates of the conscience of each petitioner.

b) It unreasonably and unlawfully abridges and denies petitioners' freedom of speech and of press.

2. The court below committed reversible error in failing to hold that Section 6194 of Connecticut General Statutes as construed and applied to the petitioner Jesse Cantwell is void by reason of the fact that on its face and as thus construed and applied it is repugnant to the United States Constitution, Fourteenth Amendment, Section 1, in that

a) it unreasonably and unlawfully deprives petitioner of his liberty to worship ALMIGHTY GOD according to God-given commands recorded in Holy Writ and according to the dictates of petitioner's conscience; and

b) it unreasonably and unlawfully deprives petitioner of his liberty to speak freely and his liberty of press.

3. The court below committed reversible error in failing to hold that the undisputed evidence showed that petitioner Jesse Cantwell was not guilty of violating the "breach of the peace" statute by playing the phonograph record "Enemies" in the hearing of John Ganley at Ganley's invitation.

Points for Argument

POINT ONE

Section 6294 of Connecticut General Statutes as amended by Section 860d of the 1937 Supplement on its face and as construed and applied unreasonably and unlawfully deprives petitioners of their right of freedom to worship ALMIGHTY GOD and is therefore invalid under the "due process" clause of the Fourteenth Amendment to the United States Constitution.

A

The 'imprescriptible right' of freedom to worship ALMIGHTY GOD, Jehovah, in accordance with God-given commands recorded in Holy Writ and with the dictates of one's own conscience is definitely and clearly included within the liberties and rights secured under the "due process" clause of the Fourteenth Amendment against state invasion.

B

The 'imprescriptible right' to freely worship and serve Almighty God, JEHOVAH, by going from door to door as commanded by JEHOVAH, whose law is supreme, and as did Jesus Christ and His apostles, is an essential privilege and one of the "imprescriptible rights" of every person who resides within the United States of America.

POINT TWO

Section 6294 of Connecticut General Statutes as amended by Section 860d of the 1937 Supplement as construed and applied to petitioners unreasonably and unlawfully deprives petitioners of their rights of freedom of speech and of press protected and secured against state invasion under the "due process" clause of the Fourteenth Amendment to the United States Constitution.

POINT THREE

Section 6194 of Connecticut General Statutes as construed and applied to petitioner Jesse Cantwell unreasonably and unlawfully deprives him of his liberty to worship ALMIGHTY GOD according to the God-given mandates recorded in Holy Writ and according to the dictates of petitioner's conscience, and of his liberty of speech and of press, all in violation of the United States Constitution, Fourteenth Amendment, Section 1.

POINT FOUR

The undisputed evidence shows beyond all doubt that the petitioner Jesse Cantwell was not guilty of the offense of inciting a breach of the peace, and to permit his conviction thereof to stand constitutes amputation of his "imprescriptible rights" of freedom to worship ALMIGHTY GOD, and freedom of speech and of press, under the guise of "breach-of-peace statute" violation.

ARGUMENT

POINT ONE

Section 6294 of Connecticut General Statutes as amended by Section 860d of the 1937 Supplement on its face and as construed and applied unreasonably and unlawfully deprives petitioners of their right of freedom to worship ALMIGHTY GOD and is therefore invalid under the "due process" clause of the Fourteenth Amendment to the United States Constitution.

A

The 'imprescriptible right' of freedom to worship ALMIGHTY GOD, Jehovah, in accordance with God-given commands recorded in Holy Writ and with the dictates of one's own conscience is definitely and clearly included within the liberties and rights secured under the "due process" clause of the Fourteenth Amendment against state invasion.

It is a fundamental proposition of law that the right of "freedom of worship", like that of "freedom of speech" and of "press", is an inherent right of every person residing in the United States. This Court has held that in this country the full and free right to entertain any belief, to practice any righteous principle, and to teach any sound doctrine is conceded to all persons.

Watson v. Jones,
80 U. S. 728

In *Hamilton* v. *Regents*, 293 U. S. 245, 265, Mr. Justice Cardozo said:

> "I assume for present purposes that the religious liberty protected by the First Amendment against invasion by the nation is protected by the Fourteenth Amendment against invasion by the states."

This same fundamental principle is expressed in *Palko* v. *Connecticut*, 302 U. S. 319, 325; *Snyder* v. *Massachusetts*, 291 U.S. 105; *Stromberg* v. *California*, 283 U.S. 359; *Hague* v. *C. I. O. et al.* (Mr. Justice Stone's opinion), 307 U.S. 496; *Gitlow* v. *New York*, 268 U. S. 652; *Davis* v. *Beason*, 133 U. S. 333, 342, 343; *Meyer* v. *Nebraska*, 262 U. S. 390; *De Jonge* v. *Oregon*, 299 U. S. 353; *Herndon* v. *Lowry*, 301 U. S. 242; *Gobitis* v. *Minersville School Dist. et al.*, 21 F. Supp. 581, 24 F. Supp. 271, affirmed November 10, 1939, C. C. A. (3), 108 F. (2) 683; and now pending before this Court on writ of certiorari, No. 690, October Term, 1939; *Lovell* v. *City of Griffin*, 303 U. S. 444; *Schneider* v. *Town of Irvington*, 308 U. S. 147.

Attention is drawn to language of Mr. Justice Butler in *Hamilton* v. *Regents*, supra, as follows:

> "There need be no attempt to enumerate or comprehensively to define what is included in the 'liberty' protected by the due process clause. Undoubtedly it does include the right to entertain the beliefs, to adhere to the principles, and to teach the doctrines on which these students base their objections to the order prescribing military training."

B

The 'imprescriptible right' to freely worship and serve Almighty God, JEHOVAH, by going from door to door as commanded by JEHOVAH, whose law is supreme, and as did Jesus Christ and His apostles, is an essential privilege and one of the "imprescriptible rights" of every person who resides within the United States of America.

With all good conscience petitioners were obeying God's commandment by presenting to the people at each home the message of God's Word in printed form and inviting them to read the same quietly in their homes. If any thus approached declined to hear, petitioners quietly passed on to the next householder. In no way were they violating the law of morality or of property, nor did their acts infringe on personal rights; nor were they inimical to the safety of the state.

The undisputed evidence shows that they were acting in this capacity as duly ordained ministers of Almighty God preaching the gospel of His Kingdom under Christ Jesus, and were thus exclusively worshiping and serving Almighty God, JEHOVAH, in spirit and in truth according to the God-given commands recorded in Holy Writ and in accordance with the dictates of their conscience. This must be admitted by all.

The courts below did not deny or dispute this fact, but attempted to side-step the constitutional issue and to distinguish this case from other cases of Jehovah's witnesses who were arrested while exercising in like manner rights protected against state invasion under the "due process" clause of the Federal Constitution, by holding that the statute in question was *not sought* to be applied to activities of worship or of "the press" but only to "solicitation of funds", and said:

> " . . . It is such solicitation which brings the defendants within the statute, not their other and apparently predominant activities in the dissemination of literature. For this reason there is not, as claimed, the constitutional objection which was found as to the application to members of this same organization of ordinances involved in Lovell v. City of Griffin, 303 U. S. 444, . . . and Cincinnati v. Mosier, 14 Ohio Opinions 134."

Turning now to the statute in question: It is to be noted that, according to its terms, it is directed at solicitation "for any alleged religious, charitable or philanthropic cause", and the statute on its face absolutely prohibits the activity of any natural or artificial person in the state or county for these purposes unless such person has first secured the approval of the secretary of the public welfare council. This Court will take judicial notice that the activities of many sponsors of a charitable cause are conducted from house to house and from door to door. This Court will notice from the evidence and will take judicial notice of the fact that the mode or manner of worship or service of Almighty God by Jehovah's witnesses includes, among other things, the activity of going from door to door and leaving at the homes of the people choosing to accept books explaining the Bible and informing them about God's Kingdom as being the only hope of the people and about the snare of religion. In doing this work, which the court below recognizes and finds is the predominant part of the petitioners' work and, *incidental thereto,* they receive from some persons contributions of money tendered at the time of accepting the printed message, which contributions Jehovah's witnesses (including petitioners) use toward defraying the cost of printing and distributing more of like literature. Thus is defrayed, in part, the expense of disseminating this printed message throughout the entire world. The deficits are taken care of from other funds voluntarily contributed by Jehovah's witnesses and others

interested. It can thus be seen that the statute in question ON ITS FACE prohibits the work of petitioners and Jehovah's witnesses. The statute is therefore void *on its face* because of the fact that it unlawfully deprives petitioners of their liberty to worship and serve Almighty God as they are commanded by Him to do, according to His written law, which is supreme, superseding all legislation of human conception and enactment. The statute *on its face* is in direct contravention of the Fourteenth Amendment because it obviously prohibits the lawful and beneficial activity of petitioners.

It is obvious that the work of petitioners is a good work, a work that is at once beneficial *to others* and benevolent, and also an act of worship of JEHOVAH GOD. It is not inimical to the safety of the state and does not violate the law of morals or of property, and none of the exceptions that preclude petitioners from asserting the constitutional estoppel to prevent state encroachment upon the free exercise and enjoyment of their "imprescriptible rights" can be discovered in the evidence. The undisputed evidence conclusively eliminates any such exceptions to the protection provided by the Federal Constitution. Furthermore, by no stretch of the imagination nor by any sound reasoning can it be rightly found and declared that the activities of petitioners and Jehovah's witnesses as herein particularly described are either wholly or partially a cause

a) "religious" or
b) "a bona fide object of charity" or
c) a bona fide object of "philanthropy"

within which all or any of those three classifications attempt has wrongfully and needlessly been made on behalf of the State of Connecticut to confine at least one incidental part of the whole activity of Jehovah's witnesses.

The practice or requirement of having a minister of Almighty God apply to a so-called "secretary of the public welfare council" is peculiarly totalitarian in spirit and in

principle, and therefore un-American, unconstitutional. The statute vests absolute control and discretion in the said "secretary". There is nothing to limit or control his power to grant or refuse a permit. He can refuse to find a "cause" to be approvable by him because of his whim or prejudice or caprice, or purely because he 'does not like the color of applicant's hair'.

This is purely prior censorship and absolutely amputates the right of a true follower of Jesus Christ to worship and serve ALMIGHTY GOD as commanded by Him. We submit that if today the Lord Jesus Christ were on earth in the flesh and went from house to house in the State of Connecticut as He did in ancient Palestine, He would be liable to be incarcerated because of this statute. In times of old the apostles of Jesus Christ likewise went from door to door teaching the people and did receive valuable things and services from persons of good will toward Almighty God to aid in carrying on the work of preaching God's Kingdom message. Now should those apostles be on earth in the flesh and doing this same work in Connecticut they would be liable to be imprisoned, convicted and branded as criminals, as were the petitioners, solely by reason of the fact that they were humbly and sincerely performing a lawful and beneficial (*to others*) work in the community in compliance with and conscientious obedience to the written commands of Almighty God.

We reiterate that the statute *on its face* is void and in direct conflict with the United States Constitution, Fourteenth Amendment, Section 1, because wrongfully and unlawfully controlling, censoring and depriving petitioners of liberty to exercise and enjoy their "imprescriptible rights" of freedom to worship ALMIGHTY GOD according to God-given commands contained in Holy Writ and according to the dictates of their conscience.

Only the "corporate" or "totalitarian" state attempts to regulate the conscience of men or attempts to compel sincere followers of Jesus Christ to obey man's law which

is in derogation of the perfect law of ALMIGHTY GOD.

The statute provides that the public welfare council secretary shall examine into the activity to determine if "religious" or "a bona fide object of charity or philanthropy". It does not set any standards. It gives him unlimited discretion and power. If in his own mind or opinion, which is uncontrolled by law or statute, he determines against the activity of any person, he can arbitrarily refuse to approve the "cause" and refuse to issue a permit and at any time revoke any previous permit.

The law is inquisitorial, un-American.

Until recently a law such as this, as applied to sincere followers of Jesus Christ, was not dreamed of in America. But since the advance of the totalitarian spirit and of the conspiracy to rule America by dictators many strange and unusual things have come to pass. The dictatorial and totalitarian spirit has struck down the institutions of life and liberty in all the countries of Europe, and is rapidly moving forward in this country. In this day of dire distress in the world nothing could be of greater importance than to inform the people of the gracious provisions made by ALMIGHTY GOD for the oppressed, the "refugees" and the poor, and which information can be best transmitted to the people in their homes by means of printed publications carried to them, as petitioners were doing. The dictators would deprive the people of this information, as in this case.

This Court can take judicial notice of the portions of Holy Writ which command that this work of Jehovah's witnesses shall be done in the manner herein described.

This Court can take judicial notice of what Jehovah's witnesses individually and also (through the Watch Tower Bible & Tract Society) collectively say that the Bible plainly teaches, and of the belief of Jehovah's witnesses individually.

In *Jones on Evidence* (Fourth Edition, 1938), Vol. 1, page 230, paragraph 130, it is held that the courts take

judicial notice of the *contents of the Bible*, of the general doctrines maintained by those who claim to hold to its teachings, and that there are numerous organizations of persons called "Christians" respectively maintaining different and conflicting doctrines respecting predestination, eternal punishment, the infallibility of the Scriptures, and the like.

We now particularize some significant things under this ground of error.

The original presentation herein to this Court which by it has been treated as a petition for a writ of certiorari this Court has rightly granted, by reason of the fact that the essential privilege of every person who resides within jurisdiction of the United States of America to worship ALMIGHTY GOD in obedience to His written mandates and in accordance with such person's conscientious belief and understanding of his Maker's requirements so prescribed, has been wrongfully and unlawfully denied to petitioners through the ruling of the courts below.

High courts of this country, including this august tribunal, at regularly set intervals formally invoke the guidance and blessing of ALMIGHTY GOD.

From the birth of this nation it has been recognized as a "Christian nation"; meaning that its inhabitants try to follow the lead of Jesus Christ, the Son of the ALMIGHTY ONE, JEHOVAH.

The law of His Father the Lord Jesus Christ always obeys.

Every follower of Christ Jesus is duty-bound likewise to obey the law of JEHOVAH.—See Psalm 40:8; 1 Peter 2:21; Deuteronomy 11:27.

As one wholly consecrated and devoted to the service of Almighty God under His Son's lead, each of your petitioners, as every one of Jehovah's witnesses, is also an ordained minister of Almighty God to preach the gospel of God's kingdom under Christ Jesus. For one like any of your petitioners willingly to disobey the commandments

of Almighty God would result in the destruction of such disobedient one, they and each of your petitioners sincerely and conscientiously believe.

To worship Almighty God means to obey His commandments; therefore, to serve Him as commanded by His written law. The words of Christ Jesus are, "Thou shalt worship the Lord thy God, and him only shalt thou serve." (Matthew 4:10) "God is a Spirit: and they that worship him must worship him in spirit and in truth."—John 4:24.

According to Black's *Law Dictionary*, "worship" is the offering of honor and adoration to the Divine Being, THE MOST HIGH GOD.

In *Weiss* v. *District Board et al.*, 76 Wis. 177 (212), the court says that worship includes making Jehovah the object of supreme affection and *rendering to Him supreme obedience.*

At time of their arrest each of your petitioners was actively worshiping Almighty God in spirit and in truth. Each of them was conducting himself strictly in obedience to God's commandments and in harmony with their joint and individual conscientious belief and understanding of their Maker's requirements of them. Following are some of the commandments of Almighty God which the follower of Christ Jesus must obey:

"Ye are my witnesses, saith the Lord, that I am God."—Isaiah 43:10-12.

"The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn."—Isaiah 61:1, 2.

These texts apply to all followers of Christ Jesus. To all such also the following commandments by the Lord are mandatory:

"This gospel of the kingdom shall be preached in all the world for a witness unto all nations: and then shall the end come." (Matthew 24:14) "Go ye into all the world, and preach the gospel to every creature."—Mark 16:15.

"If thou dost not speak to warn the wicked from his way, that wicked man shall die in his iniquity; but *his blood will I require at thine hand.* Nevertheless, if thou warn the wicked of his way to turn from it; if he do not turn from his way, he shall die in his iniquity; but thou hast delivered thy soul."—Ezekiel 33:8, 9.

Your petitioners verily believe that at the time of their arrest and as the direct cause of the arrest of each of them each was acting in exact conformity and compliance with the God-given commandments hereinbefore quoted from Holy Writ. Petitioners thus acted not for self-aggrandizement, but to benefit all upright persons. Petitioners so acted in all good conscience, boldly and deliberately pursuing their God-given task by presenting to occupants of homes the message of the Word of Almighty God, tendering such message in printed and *otherwise recorded* form and inviting householders to read the same quietly in their own homes. If any thus approached declined to hear, the minister quietly and promptly passed on. In no way did any of your petitioners violate the law of morality or of property; nor did any of them act so as to infringe on personal rights; nor were their acts inimical to the safety of the state. Neither was any one of them unlawfully or wrongfully competing or in any way competing with any local or other commercial enterprise conducted within the State of Connecticut for private gain.

In going from house to house with the printed and *otherwise recorded* Bible message and thus worshiping Almighty God according to His written law and petitioners' conscientious understanding of its mandate to such as each of them, they were acting exactly as did Jesus Christ and His apostles. Concerning the Lord and Master when on earth it is written: "He went round about

the villages, teaching." (Mark 6:6) "He went throughout every city and village, preaching and shewing the glad tidings of the kingdom of God: and the twelve were with him."—Luke 8:1.

Preaching from house to house was Jesus' method of communicating to the people vital information His Father had given to and authorized Him to publish among the people. That same method Jesus told His disciples to use, saying, "And, as ye go, preach, saying, The kingdom of heaven is at hand. And when ye come into an house, salute it. And if the house be worthy, let your peace come upon it; but if it be not worthy, let your peace return to you. And whosoever shall not receive you, nor hear your words, when ye depart out of that house or city, shake off the dust of your feet."—Matthew 10:7, 12-14.

The apostles of Jesus Christ taught publicly by going "from house to house".—See Acts 20:20.

Thus also each of your petitioners was worshiping Almighty God, Jehovah, according to the God-given commandment and in conformity with the dictates of his conscience, and was so doing within the bounds of the State of Connecticut, the Constitution of which state secures to every person that right against abridgment by any.

It is not within the power or authority of the State of Connecticut, by legislative, judicial or other means, to abridge any person's right freely, conscientiously and exclusively to obey Almighty God.

Human creatures or human powers cannot set aside the Almighty Creator's law nor prevent any creature's conscientious and exclusive obedience to that Supreme One's mandate recorded in Holy Writ.

"No external authority is to place itself between the finite being and the Infinite when the former is seeking to render the homage that is due, and in a mode which

commends itself to his conscience and judgment as being suitable for him to render, and acceptable to its object."

Cooley, *Constitutional Limitations*,
8th ed., page 968

SUPREME

Almighty God JEHOVAH is supreme.

All who live must depend upon Him and obey Him.

He is the "fountain of life". (Psalm 36:9) One who would live must obey God's law. (John 17:3) "The law of the Lord is perfect, . . . The statutes of the Lord are right, . . . the commandment of the Lord is pure."—Psalm 19:7, 8.

When in ancient times the apostles of Jesus Christ were haled before magistrates, charged with preaching the gospel from place to place and publicly, contrary to whim of certain governing officers, the accused answered in open court: "We ought to obey God rather than men." (See Acts 5:17-42.) According to Holy Writ, those officers then commanded "that they should not speak in the name of Jesus, and let them go". Jesus' apostles positively refused, however, to heed that command of men. Instead, they deliberately chose to resume acting in obedience to the command of Almighty God; and hence we read that "*daily* in the temple, and in *every house*, they *ceased not* to teach and preach Jesus Christ". (Acts 5:40-42) That same rule of the Almighty God every true follower of Jesus Christ today boldly and joyfully and deliberately obeys.

Misuse of legislative devices to prohibit or subjugate to human control any activity such as that performed by each of your petitioners in conscientious obedience to the Creator's written mandates can be rightly deemed to be only an attempt to 'frame mischief by law'.—Psalm 94:20.

Such mischievous attempts to suppress or interdict wholesome and constructive work like that of your petitioners cannot be otherwise rightly regarded than displeasing and reprehensible, as well as abominable, in the sight of both ALMIGHTY GOD and every upright person. Well chosen words are those of Mr. Justice Brandeis as to proscribing of liberty:

> "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding."
>
> Olmstead v. United States,
> 277 U. S. 479
> (Dissenting opinion)

The people of all nations where the Bible is believed to be God's Word of truth have recognized the supremacy of His law as therein written. A recognized authority on the common law has well said:

> "Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being: . . . and consequently, as man depends absolutely upon his Maker for everything, it is necessary that he should in all points conform to his Maker's will. . . .
>
> "The will of his Maker is called the law of nature. . . .
>
> "This law of nature, being coeval with mankind, and dictated by God himself, is, of course, superior in obligation to any other. It is binding over all the globe, in all countries, at all times. *No human laws are of any validity if contrary to this* . . .
>
> ". . . Divine Providence . . . hath been pleased at sundry times and in divers manners to discover and

enforce its laws by an immediate and direct revelation. The doctrines thus discovered, we call the revealed or divine law, and *they are to be found only in the Holy Scriptures. . . . . no human laws should be suffered to contradict these.*"

Blackstone Commentaries,
Chase 3d ed., pp. 5-7

Some, without understanding of God's purposes as revealed in His written Word, might contend that the work petitioners were doing was not the proper *way* to worship. On this we say: It is not for the court below or for any court, including the Supreme Court of the United States, to say that a particular act is or is not an act of worship of Almighty God, even as in His Word it is written:

"Who art thou that judgest another man's servant? to his own master he standeth or falleth. Yea, he shall be holden up: for God is able to make him stand."

THE BIBLE, Romans 14:4

ALMIGHTY GOD alone, through His Son Christ Jesus, rightfully and righteously judges as to whether one is genuinely His servant, in spirit and in truth.

This rule is recognized by this Court in the case of *Reynolds* v. *United States,* 98 U. S. 145 (162), wherein it is said:

"Before the adoption of the [United States] Constitution, attempts were made in some of the colonies and States to legislate not only in respect to the establishment of religion, but in respect to its doctrines and precepts as well. . . . The controversy upon this general subject was animated in many of the States, but seemed at last to culminate in Virginia. In 1784, the House of Delegates of that State having under consideration 'a bill establishing provision for teachers of the Christian religion', postponed it until the next session, and directed that the bill should be published and distributed, and that the people be requested

'to signify their opinion respecting the adoption of such a bill at the next session of assembly'.

"This brought out a determined opposition. Amongst others, Mr. Madison prepared a 'Memorial and Remonstrance', which was widely circulated and signed, and in which he demonstrated 'that religion, or the duty we owe the Creator', was not within the cognizance of civil government. Semple's Virginia Baptists, Appendix. At the next session the proposed bill was not only defeated, but another, 'for establishing religious freedom,' drafted by Mr. Jefferson, was passed. 1 Jeff. Works, 45; 2 Howison, Hist. of Va. 298. In the preamble of this act (12 Hening's Stat. 84) religious freedom is defined; and after a recital 'that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty', it is declared 'that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order'. In these two sentences is found the true distinction between what properly belongs to the church and what to the State."

Concerning the constitutional right of freedom of thought, Mr. Justice Holmes well said:

"If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate."

United States v. Schwimmer,
279 U. S. 644, 654

By the foregoing it conclusively appears that there was a substantial showing, both in the work done by your petitioners and in their pleading in the courts below, of their

rightful and privileged exercise of the liberty to worship ALMIGHTY GOD as that liberty is, for them and all other inhabitants of this country, constitutionally secured against state interdictment, and which liberty was in this case wrongfully abridged. Therefore, as we respectfully submit, under the sound counsel of this Court in *Schneider* v. *Town of Irvington,* supra, and *Lovell* v. *City of Griffin,* supra, the courts below, and particularly the Connecticut Supreme Court of Errors, had both the right and the undeniable and unavoidable duty to recognize and fully perform 'the delicate and difficult task of weighing the circumstances and appraising the substantiality of the *reasons advanced in support of the regulation*' of the free enjoyment and exercise of your petitioners' constitutionally protected liberty; and the courts below having failed to perform that task, this Court, by reason thereof, rightfully has jurisdiction of this cause to remedy the wrong.

It therefore clearly appears that the enforcement of the statute in question deprives petitioners of their right to freely worship Almighty God as commanded by Him. For more than a decade last past Jehovah's witnesses have experienced thousands of arrests and imprisonment after conviction wrongfully by the lower courts in all the states of the Union for doing this good work above described. Many of such courts have wrongfully attempted to distinguish their various ordinances and statutes from the challenged legislation involved in the cases of *Schneider* v. *Town of Irvington,* supra, and *Lovell* v. *City of Griffin,* supra.

This case can be easily decided in petitioners' favor on the issue of "freedom of the press"; but in order to put a "scotch-block" in the path of the continuing misapplication of ordinances by the lower courts and by appellate courts it is *necessary* for this Court to determine and adjudicate once and for all that Jehovah's witnesses, petitioners, have the right to worship Almighty God as commanded by Him, without interference; and therefore

the issue here is far more important than "freedom of the press". Necessarily such emphatic and comprehensive declaration by this Court with respect to the *vital* and *paramount issue* here involved will contribute toward conserving for other purposes the time of even this Court, not to mention numerous other constructive effects thereof.

Now the vital question for this Court to decide is: Shall a sincere follower of Jesus Christ be free in fact in this country to serve ALMIGHTY GOD without censorship, let or hindrance, as such freedom is secured for the country's every inhabitant by the Federal Constitution; or shall a State through dictatorial methods employed by a "welfare council" be permitted to determine under what conditions and the manner in which one may worship ALMIGHTY GOD?

If any State can do so, each individual's service to Almighty God will only be under the direction of "police power".

It is now necessary for this Court to pass upon this important point of "freedom to worship ALMIGHTY GOD" and thus to put a stop to the forward march of oppressive imperialism; and if this "march" is not stopped by this Court, the last bulwark to safeguard the liberties of the American people, this nation within a short time will be in a condition like that which now prevails in totalitarian states of Europe.

POINT TWO

Section 6294 of Connecticut General Statutes as amended by Section 860d of the 1937 Supplement as construed and applied to petitioners unreasonably and unlawfully deprives petitioners of their rights of freedom of speech and of press protected and secured against state invasion under the "due process" clause of the Fourteenth Amendment to the United States Constitution.

According to the undisputed evidence and the findings of the courts below, petitioners were engaged in performing activities of "the press", and the application of the statute to such activity under the guise of 'regulation of solicitation of funds for any alleged religious, charitable or philanthropic cause' unduly abridges petitioners' right of freedom of speech and of press.

We repeat, that the courts below did not deny or dispute this fact, but attempted to side-step the constitutional issue and to distinguish this case from other cases of Jehovah's witnesses who were arrested while exercising in like manner rights protected against state invasion under the "due process" clause of the Federal Constitution, by holding that the statute in question was *not sought* to be applied to activities of worship or of "the press" but only to "solicitation of funds", and said:

> " . . . It is such solicitation which brings the defendants within the statute, not their other and apparently predominant activities in the dissemination of literature. For this reason there is not, as claimed, the constitutional objection which was found as to the application to members of this same organization of ordinances involved in Lovell v. City of Griffin, 303 U. S. 444, . . . and Cincinnati v. Mosier, 14 Ohio Opinions 134."

Here let it be noted that such a distinction is absolutely frivolous and totalitarian. It is utterly ridiculous to conclude or state that the 'taking of funds' for press activity justifies the state in regulating or censoring "the press". If this were true, then every newspaper in the country would have to go bankrupt or else be censored, regulated, controlled and dictated to as they were in the "dark ages" and as they are now regulated in continental Europe. The principle announced by the court below is iniquitous in the extreme. That court has seized upon the "incidental" part of petitioners' press activity, namely, 'taking of funds,' and declares that activity is subject to regulation and thereby petitioners' "predominant activities", namely, press activity, the State amputates, takes away, regulates and censors. This is certainly a dangerous fallacy, foreign to principles of American liberty, and which should not be permitted to stand.

It is a fundamental proposition, too well settled to require quotation from authorities, that the "freedom of the press" and of "speech" is safeguarded against state invasion by the United States Constitution. See authorities cited under Point One of this brief, supra, pages 15, 16.

It is apparent that the courts below were negligent in consideration of the points here advanced and were not "astute to examine the effect of the challenged legislation" and misaimed their endeavor to perform their "delicate and difficult task of weighing the circumstances and appraising the substantiality of the reasons advanced in support of the regulation" of the exercise by petitioners of this right.

Schneider v. Town of Irvington,
supra

Lovell v. City of Griffin,
supra

The statute here in question, as construed and applied, is essentially the same as the ordinances involved in the two last cited cases. Concerning this type of municipal or state legislation and its misapplication to the work of Jehovah's witnesses, as exemplified in the two last cited cases, this Court's ringing declarations are at once noteworthy and mandatory.

While this statute might be valid as to "other personal activities", it becomes invalid when applied to petitioners' acts of "worship" and "press".

Schneider v. Town of Irvington,
supra

In *Concordia Fire Insurance Co.* v. *Illinois*, 292 U. S. 535, 545, Mr. Justice Van Devanter stated:

> "Whether a statute is valid or invalid under the equal protection clause of the Fourteenth Amendment often depends on how the statute is construed and applied. It may be valid when given a particular application and invalid when given another."

We submit that under this Point the judgment should be reversed and petitioners discharged.

POINT THREE

Section 6194 of Connecticut General Statutes as construed and applied to petitioner Jesse Cantwell unreasonably and unlawfully deprives him of his liberty to worship ALMIGHTY GOD according to the God-given mandates recorded in Holy Writ and according to the dictates of petitioner's conscience, and of his liberty of speech and of press, all in violation of the United States Constitution, Fourteenth Amendment, Section 1.

Under the foregoing point for argument we submit that it is clear that the statute has been misapplied as to Jesse Cantwell so as to deprive him of his rights of freedom of speech, of press and of worship of Almighty God as commanded by Him. On this point we here make reference to the argument made under Point Four, infra, this brief, which clearly shows that the facts concerning the action of Jesse Cantwell did not constitute a breach of the peace or a violation of said statute. The facts made the basis of his conviction were solely activity of the press, exercise of freedom of speech and freedom of worship of Almighty God, all secured by the Fourteenth Amendment. Under Points One and Two, supra, this brief, to which reference is here made, we have clearly shown that the activities of Jesse Cantwell were clearly acts protected and secured by the Constitution of the United States.

It is respectfully submitted that under this point of argument the conviction of Jesse Cantwell under the fifth count should be set aside and the statute as applied to Jesse Cantwell declared in violation of the Fourteenth Amendment.

POINT FOUR

The undisputed evidence shows beyond all doubt that the petitioner Jesse Cantwell was not guilty of the offense of inciting a breach of the peace, and to permit his conviction thereof to stand constitutes amputation of his "imprescriptible rights" of freedom to worship ALMIGHTY GOD, and freedom of speech and of press, under the guise of "breach-of-peace statute" violation.

The only ground relied upon by the Supreme Court of Errors and the trial court for convicting the defendant Jesse Cantwell under the fifth count was, as stated by the Supreme Court of Errors, to wit:

> "Jesse Cantwell stopped John Ganley and John Cafferty, both of whom are Catholics, and receiving permission played the phonograph record 'Enemies' which attacked that religion and church. On hearing it* Ganley felt like hitting Cantwell and told him to take his bag and victrola and be on his way. If he had remained he might have received physical violence. Cafferty's mental reaction was to put Jesse off the street and he warned him that he had better get off before something happened to him. . . . It is apparent from the facts found that the playing for audition by loyal Catholics of a record violently attacking their religion and church could well be found to constitute the offense charged, and they warrant finding the defendant Jesse Cantwell guilty. . . . " (R. p. 100)

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* The tone of voice and manner of delivery of the recorded four-minute speech entitled "Enemies" will be shown in open court at the time of oral argument, by the playing of the record.

There was no evidence that Jesse Cantwell knew in advance that these men were Catholics. There is no evidence that he talked loudly or boisterously or otherwise disturbed the peace. There was no disturbance of the 'public peace'. The trial court found, concerning his conduct, as follows:

> "21. On the same day Jesse Cantwell stopped John Ganley and John Cafferty on Cassius Street and re-receiving permission played the record 'Enemies'. After playing the record he showed them the book 'Enemies', stating that if they wanted to contribute toward the organization they could, or if they were firm believers, they could have the book for nothing.
>
> "27. There was no evidence that the appellants became offensive or entered into any arguments upon refusal to contribute for the purchase of the books."
>
> (R. p. 21)

John J. Ganley testified, substantially, as follows:

> 'My name is John Joseph Ganley; I live at 173 Rosette Street, New Haven. (R. p. 63) Jesse I first saw going from house to house. He had one of those portable victrolas and one of these bags and he asked if we wanted to hear the record and we heard the record. (R. p. 66) This was the first time that I ever saw one of Jehovah's witnesses on that street. (R. p. 69) When I told Jesse to go he picked up his phonograph and went. (R. p. 71) None of us made any attempt to inflict any violence upon Jesse Cantwell; when we told him to go, why he went (R. p. 71), but I imagine if he stayed there we might have started something. (R. p. 72)

John Cafferty testified:

> 'My name is John Cafferty; I live at 20 Cassius Street. (R. p. 73) Jesse played for us the record titled "Enemies" and showed us the book "Riches" and said that we could have it if we wanted to give a small donation and if we could not give we could have it free.

(R. p. 75) I was tempted to do something. Throw him off the street, physically. Practically commit a breach of the peace against him on account of what that record said against my religion. (R. p. 76) I told him he had better get off the street, and he picked up his books and walked up the street and ducked into the next house. (R. p. 76) I gave him permission to play the record. I let him play the record all the way through and I didn't tell him to shut it off.' (R. p. 79)

The undisputed evidence conclusively shows that there was no overt act toward a breach of the peace. The undisputed evidence shows that the petitioner Jesse Cantwell was acting as a peaceful and law-abiding citizen in a prudent manner. He moved on when the complaining witness told him he was not interested. He did all that was possible to do, as it was impossible for him to vanish as a spirit. It certainly was not a violation of the law to call upon the complaining witnesses for the purposes shown above, or to be physically present on Cassius Street. Jesse did no harm to anyone. In *Epoch P. Co.* v. *Davis*, 19 Ohio (NP) 465, the same contention was made as was made by the State of Connecticut, and such was precisely overruled. The court held that to presume that a breach of the peace would be apt to result would be to insult the Negro race. In *Dearborn Publishing Co.* v. *Fitzgerald*, 271 F. 479, it was said:

> "If it be assumed that the article might tend to excite others to breaches of the peace the reply is plain. It is the duty of all officials charged with preserving order and peace to suppress firmly and promptly all persons guilty of disturbing it, and *not forbid* innocent persons to exercise their lawful and equal rights. . . . If defendants' actions were sustained, the constitutional liberty of every citizen freely to speak, write and publish his sentiments on all subjects, being responsible only for abuse of that right, would be placed at the mercy of every public official who for the moment was clothed with authority to preserve the public peace and the right to a free press thus destroyed . . ."

In *Whitney* v. *California*, 274 U. S. 357, this Court, speaking through Mr. Justice Brandeis, said:

> "The fact that speech is likely to result in causing some violence . . . is not enough to justify its suppression."

It seems that by the affirmance of the conviction of Jesse Cantwell under the fifth count by the Supreme Court of Errors his right of freedom of speech and of press has been abridged upon a much thinner excuse than was advanced in the *Dearborn Publishing* case, supra. In that case it was held that even though a breach of the peace or violence is likely to result, it is not enough to justify the suppression of speech.

Certainly such rule should be invoked here.

The conviction of Jesse Cantwell under the fifth count is the rankest violation of civil rights that one could imagine. It is plainly 'framing mischief by law' in violation of the command of Almighty God.

Jesse's being found guilty of inciting a breach of the peace by obeying the command of Almighty God is, we submit, beyond the understanding of lovers of righteousness and liberty.

The sum and substance of the facts alleged to support the conviction are solely that the *message* delivered by Jesse with his portable phonograph was not acceptable to the complaining witness. The complaining witness should have been arrested and convicted instead of Jesse. Ganley and Cafferty admitted that they were almost moved to commit a breach of the peace and strike Jesse. They would have unjustifiably done that had he remained in their presence.

To suffer the misapplication of the "breach of the peace" statute to abridge constitutionally-safeguarded rights of petitioner Jesse Cantwell is outrageous. If the rule of law stated by the Connecticut Supreme Court of Errors in upholding the conviction of Jesse Cantwell under the fifth

count is to be permitted to stand, then each person in America should tremble before speaking, for fear of not pleasing all the people. Even the Lord Jesus Christ could not please all the people, and the ancient courts announced the same rule as to Him as was announced by the Connecticut Supreme Court of Errors against petitioner Jesse Cantwell.

If this Court allows that ruling on the fifth count to stand as to Jesse Cantwell, it means the end of free speech in this country. We respectfully submit that the court below was in error in sustaining the conviction of Jesse Cantwell under the fifth count. That ruling of the Connecticut court in the last resort is in conflict with the holding in *People* v. *Ludovici,* 13 N. Y. S. (2) 88, and *People* v. *Downer,* 6 N. Y. S. (2) 566, on substantially the same facts as in the case at bar. We suggest that this Court should grant petitioner Jesse Cantwell's plea for reversal of the judgment of conviction entered against him under the fifth count.

Among the oldest cases on the precise point now before this Court is the one recorded in the Bible book of Acts of the Apostles, chapter 5, beginning at verse twenty-six. Disciples of Jesus Christ were publicly informing the people, disseminating the truths of the Word of Almighty God in obedience to His command. Religionists were grieved and angered because God's truth was being proclaimed. The clergy and other religionists conspired against the

publishers of the truth. Those conspirators instigated the arrest of the disciples, who were haled into the judgment hall. A high Roman court then sitting in Palestine heard that case. After hearing the evidence, one of the members of that court, Gamaliel, a learned counselor, arose and, addressing his fellow members of the court and all present, said:

> "Refrain from these men, and let them alone: for if this counsel or this work be of men, it will come to nought: but if it be of God, ye cannot overthrow it; lest haply ye be found even to fight against God."

This temperate and salubrious principle all right-minded persons always follow.

Respectfully submitted,
JOSEPH F. RUTHERFORD
HAYDEN COVINGTON
Attorneys for Petitioners